

## PROGRAM DESCRIPTIONS

Each program of the Regional Board has unique characteristics that can affect how enforcement is implemented in that program. Regardless of those program characteristics, the Regional Board strives for consistency, equity, and effectiveness. Below are descriptions of many of the programs in the Region and program factors that affect enforcement.

### 1. National Pollutant Discharge Elimination System (NPDES) Program

#### Program Overview

NPDES permits are issued pursuant to Chapter 5.5, Division 7 of the California Water Code, federal Clean Water Act section 402, and implementing regulations adopted by the U.S. Environmental Protection Agency (US EPA).

The NPDES Program has responsibility for regulating wastewater discharges to surface waters. Primary program activities include: (1) issuing NPDES permits (new and renewals), (2) monitoring discharger compliance with permit requirements (review of discharger self-monitoring reports (SMRs) and compliance inspections), (3) taking enforcement action as appropriate (Notices of Violations, Mandatory Minimum Penalties, etc.), (4) investigating spills and illegal discharges and (5) handling petitions and litigation.

#### Central Valley Region Program Profile

The Region has between 1/4 and 1/3 of the individual NPDES permits statewide. Resources allocated to the Region have always fallen short of being adequate to address all program activities. Over time this has necessitated prioritizing program activities and resulted in some program activities not being completed. For a number of years, addressing the Region's permitting backlog has been our highest priority. The Region's individual permit workload and NPDES resources are:

# Individual NPDES Permits	NPDES Resources
222	\$1,449,289

By office, the Region's permits and resources are distributed as follows:

Office	# Individual NPDES Permits Major/Minor	% NPDES Resources
Fresno	8/37	16%
Redding	12/55	18%
Sacramento	33/77	66%

During fiscal year (FY) 2003-04 the NPDES program took a significant staffing cut when Federal funds were returned to US EPA. US EPA in turn used these funds to have their contractor (Tetrtech) assist Regional Boards with program activities. This resulted in several

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NPDES permits writers across all three offices being shifted from NPDES to other program work. This situation continues this FY. Staff expects that these funds will eventually be returned to the State in the future, but not this FY. While the assistance from the contractor has been helpful and resulted in more program tasks being completed, it created a situation where the staff remaining in the program saw their caseloads increase and the work performed by the contractor needing varying degrees of staff oversight and review. The contractor has been involved in some aspects of the NPDES program for several years, but prior to last FY 03-04, this was limited to compliance and pretreatment inspections. In FY 03-04 the contractor began assisting staff with drafting NPDES permits as well.

*Permitting:*

For permit actions, the list of FY 04-05 activities included permits carried over from FY 03-04 plus those permits scheduled to expire during FY 04-05. The following table displays the combined Regional Board staff and the contractor's permitting commitments:

<b>FY 2004-05 Combined RB and Contractor Work Plan</b>					
	<b>Permit Renewals</b>		<b>New Permits</b>	<b>General Permits</b>	
<b>Office</b>	<b>Majors RB/Cont.</b>	<b>Minors RB/Cont.</b>	<b>Minors RB/Cont.</b>	<b>RB/Cont.</b>	<b>Total RB/Cont.</b>
<b>Fresno</b>	2/3	3/20			5/23
<b>Redding</b>	5/0	15/12	2/0		22/12
<b>Sacramento</b>	5/3	7/11	2/3		14/17
<b>Total</b>	12/6	25/43	4/3	0/0	41/52

These are the Region's permitting commitments for the fiscal year. These numbers do not include two master reclamation permits being prepared by the Sacramento office or several permits requiring staff work as a result of petitions or litigation. Although it may appear from the numbers that the contractor is handling more than 50% of our permit commitments, each permit the contractor works on also requires a significant amount of Region Board staff effort to complete the permit and take it to the Board for adoption.

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The status of permitting accomplishments by office through the January 2005 Board Meeting is displayed in the following table:

FY 2004-05 Permitting Accomplishments through January 2005 Board Meeting			
Office	Majors Renew/Rescind	Minors Renew/Rescind/New	Total Renew/Rescind/New
Fresno	0/0	4/1/0	4/1/0
Redding	4/1	21/1/0	25/2/0
Sacramento	3/0	2/1/1	5/1/1
Total	7/1	27/3/1	34/4/1

This summary of permitting accomplishments does not include “non-work plan” items such as permit revisions and amendments that must be addressed periodically. These permit activities can require substantial staff resources and represent an activity not adequately accounted for in the program work plan.

*Compliance and Pretreatment Inspections:*

The contractor has conducted most of the compliance inspections and all of the pretreatment inspections for the last FY and is doing the same this year. This frees Regional Board staff to focus on permitting and enforcement. Regional Board staff conducts or accompanies the contractor on compliance inspections for critical or problematic facilities and for facilities for which the permit is due for renewal. The contractor provides a draft inspection report, which staff reviews and then transmits to the discharger with appropriate action (e.g. Notice of Violation, etc.). Overall, this process has worked well.

**Enforcement**

The enforcement workload is variable and unpredictable, but with the Mandatory Minimum Penalty (MMP) legislation, there is constant backlog of violations that must be addressed. All three offices are making concerted efforts to catch up and stay current with Self Monitoring Report (SMR) review and this, of course, results in more MMP violations to address. The program has made a concerted effort over the last few months to address the MMP backlog and a number of the more significant facilities have been addressed. Staff’s approach has been to address the facilities with the largest number of violations first, so the total number of violations addressed has decreased faster than the number of facilities with violations. And, because staff is catching up with monitoring report review, the number of violations is increasing.

Thus far this FY, MMPs have been processed for 14 facilities totaling \$813,000. Of this group nine facilities paid the assessed amount to the Cleanup and Abatement Account totaling \$309,000. Additionally, one facility has paid \$50,000 to the Cleanup and Abatement Account and \$64,000 for a SEP, one facility has requested a compliance project for \$255,000 and 3 facilities are negotiating Supplemental Environmental Projects (SEPs). Two ACLs have been

issued for non-MMP violations (spills) totaling \$245,000 and these are in the process of being resolved.

### **Program Impacts from Redirection of Resources to Enforcement**

The current resource level is inadequate to cover all required program activities. Even with assistance from US EPA through the Tetrattech contract work, staff is not able to catch up and stay current with permit renewals (including backlogged permits) and issuance (new and remands). Simply stated, increasing emphasis on enforcement and directing resources from permitting to enforcement will (1) exacerbate the permit backlog situation and result in increased pressure from US EPA to catch up and stay current with permit renewals and (2) make it more difficult to be responsive to dischargers for permit modifications and new permits.

## **2. Waste Discharge Requirements (WDR) Program**

### **Program Overview**

The California Water Code, Division 7 (commencing with Section 13000) provides the legal authority for the program. The WDR Program covers waste discharges that, based upon waste character, need not be classified as designated waste and thus, under appropriate conditions, can be released to infiltrate soil and reach groundwater, but not to discharge to surface water of the United States. It includes discharges of waste to surface waters that are not surface waters of the United States, and activities in surface waters of the United States that are exempt from federal regulation under the Clean Water Act (such as particular wetland fill and dredging projects). Waivers pertain to discharges that fall within the scope of the WDR Program, but which by their size, nature, and control method have a very low probability of affecting State waters.

The objective of the program is to, as efficiently as possible, establish conditions and accountability in WDRs that, for any discharger, preclude creation of a nuisance condition, avoid or minimize groundwater degradation, and prevent pollution of groundwater. Where unreasonable degradation, nuisance, or pollution occurs despite this, the objective becomes mitigation and remedy through progressive enforcement.

### **Central Valley Region Program Profile**

The Region has almost 1200 facilities under waste discharge requirements in the WDR Program, nearly a third of the statewide total, and more facilities pending waste discharge requirements or waiver.

The following table outlines the Region's caseload and program resources:

Number of Facilities	Staff (PYs)	Staff Charging to Program	04/05 Program Budget	Staff Needs (State Board estimate)
1200	21.4	66	\$3,247,413	116

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Routine caseload management by staff takes 25% of resources, and program administration (training, database management, meetings, miscellaneous communication) takes 12%, which leaves 14 PYs for permits, inspections, and enforcement.

Resources in Fresno and Sacramento enable the offices to maintain WDR Program units containing staff who primarily work within the WDR Program. The program resources in Redding are such that most staff that work in the WDR Program also implement other programs. In fact, many staff throughout the organization supported mainly by other program budgets conduct some budgeted and unbudgeted work in the WDR Program. For example, UST and SLIC staff that issue WDRs as part of the oversight cleanup process receive a token budget from the WDR Program for that work. Some WDR Program funds still supplement CAFO regulation.

The current workload and distribution of resources among the three offices is as follows:

Office:	Fresno	Sacramento	Redding
% workload:	56%	31%	13%
PYs:	12	6.6	2.8

Facilities within the core regulatory programs can involve more than one program. Many NPDES sites have a WDR component, especially in the Tulare Lake Basin where most surface water discharges occur seasonally. Similarly, a number of WDR Program sites have one or more potential points of release more appropriately subject to Title 27 Program criteria.

Ongoing WDR Program specific issues include the following:

- consistent and proper implementation of the Antidegradation Policy;
- implementing the municipal wastewater strategy;
- implementing food process wastewater land application strategy;
- BMP and technical support and interface efforts;
- working with the League of Food Processors;
- working with the Wine Institute;
- inadequate formal technical training for Program staff;
- resource limitations;
- regulation of septic systems (implementation of AB 885);
- extensive backlog of overdue updates of existing WDRs;
- backlog of reports of waste discharge (RWDs) that exceed 140 days;
- backlog of facilities with overdue enforcement (per Enforcement Policy);
- long delays in technical report review; and
- conflicting priorities (e.g., work under the California Environmental Quality Act (CEQA)).

### **Enforcement**

Regional Board staff works closely with cooperative dischargers to expedite permit processing and report turn-around, as well as to correct minor violations at the informal level. Verbal contact by telephone or by letter is routine for minor violations. Staff sometimes issues Notices to Comply, but this is fairly rare. Staff issues Notice of Violation letters regularly for overdue and incomplete technical reports, and for violations determined during inspection. Notices of Violation for failure to submit, or for incomplete, monitoring and technical reports varies by office. 13267 Orders are issued regularly. All the formal enforcement tools have been used in the standard way for particular dischargers, but due to conflicting priorities and limited resources, not in the numbers justified by known noncompliance records.

### **Program Impacts from Redirection of Resources to Enforcement**

The original WDR Program work plan proposed 2.5 PYs for enforcement and about 3 PYs each for permits, inspections, and review of SMRs. The relatively small balance of resources was for CEQA review, consistency, technical report review, septic system oversight, etc. Greater enforcement means the numbers of completed new and updated WDRs, completed inspections, and/or reviewed SMRs will be affected. As SMRs and inspections support enforcement actions, these will be impacted less than permits. Greatest impact will occur in delayed permitting (increasing the number of RWDs greater than 140 days old), and postponed updates of WDRs (increasing the number of backlogged updates). The Region's WDR update backlog has been an issue for the State Board and State Legislature before - a short-term increase in resources was granted a few years ago to decrease the backlog.

## **3. Land Disposal Program**

### **Program Overview**

The Land Disposal Program regulates the discharge to land of certain solid and liquid wastes. These wastes include municipal solid waste (MSW), hazardous wastes, designated wastes, and nonhazardous and inert solid wastes. In general, these wastes cannot be discharged directly to the ground surface without impacting groundwater or surface water, and therefore must be contained to isolate them from the environment. The regulations applicable to these discharges are found in Title 27, for nonhazardous wastes, or Chapter 15 of Title 23, for hazardous wastes, of the California Code of Regulations. These regulations have both prescriptive and performance standards for waste containment, monitoring, and closure. The requirements are implemented through the adoption of Waste Discharge Requirements for the disposal facilities.

### **Central Valley Region Program Profile**

The Land Disposal Program has about 300 facilities that are under waste discharge requirements implementing Title 27 or Chapter 15. About half of the facilities are active or closed MSW landfills. There are a handful of hazardous waste disposal facilities, including two of the State's four active hazardous waste facilities. The remaining sites are generally facilities discharging inert or designated solid wastes or designated liquid wastes (including salty wastewaters) such as mines, oil-field produced-water disposal sites, and industrial facilities. The industrial facilities include a broad variety of sources such as energy production, manufacturing, and refining. The

Land Disposal Program also regulates certain food processing facilities, such as olive briners, because they generate designated liquid wastes. The waste management units used to contain the various wastes include landfills, waste piles, surface impoundments, and land treatment units. The Land Disposal Program also regulates green waste composting sites. Program staff also work on numerous sites not under WDRs.

The Central Valley Region has the largest land disposal budget of the State and Regional Boards; about 37% of the entire program. Our 2004/2005 budget is \$3.2 million with \$1.8 million allotted to personal services. This budget supports approximately 24 staff of the 27.3 authorized PYs.

### **Enforcement**

Priority violations for the Land Disposal Program are defined in the Enforcement Policy. These priority violations emphasize waste characterization, engineering, construction, and monitoring related requirements in the regulations. Common violations seen in the Program involve improper precipitation and drainage controls, failure to monitor or submit monitoring reports, failure to respond to evidence of a release, and not complying with time schedules in WDRs.

Land Disposal Program staff typically uses informal enforcement as described above to achieve compliance for the simple violations. Time schedules to correct more complex problems are generally included in WDRs or enforcement orders, and failure to comply on schedule is generally handled first with informal enforcement, and then formal enforcement when compliance is still not achieved. One of the factors influencing the decision on the level of enforcement is whether the discharger has chronic violations, and whether they have taken steps to correct those violations.

The Land Disposal Program's enforcement process is somewhat different than other programs because of procedures detailed in Title 27 and Chapter 15. When a release from a permitted waste management unit is discovered, the regulations require dischargers to take certain response actions and to apply for revised WDRs. These actions include evaluation monitoring to define the release, engineering feasibility studies to identify possible remedies, and corrective action plans for the proposed actions. The regulations require dischargers to submit amended reports of waste discharge and the Regional Board to adopt revised waste discharge requirements to implement corrective actions. Most Land Disposal Program facilities generally conduct this response process and implement corrective actions without a cleanup and abatement orders because the manner of compliance is specified in WDRs and applicable regulations.

Land Disposal Program staff coordinate their enforcement activities closely with the appropriate agencies, including Local Enforcement Agencies, typically the County's Environmental Health Department, and the Integrated Waste Management Board for landfill sites subject to Title 27. Enforcement at hazardous waste sites is done in coordination with the California Department of Toxic Substances Control (DTSC). Non-landfill facilities typically involve other agencies that are consulted during enforcement activities, such as the local District Attorney, Attorney General, Department of Fish and Game, Division of Oil, Gas and Geothermal Resources, or US

Fish and Wildlife Service, depending on the nature of the site and problem. Program staff also attend and support the Environmental Task Force meetings held regularly throughout the Region.

A significant time and resource issue for the Land Disposal Program is protracted enforcement and litigation on inactive mines. These sites, some historical and some first operated in the 1980's, typically involve significant environmental impacts and substantial costs to mitigate. These cases can last many years, require significant staff effort, and result in very few of the outputs typically counted in enforcement action tallies.

#### **Program Impacts from Redirection of Resources to Enforcement**

Every year the Region's Land Disposal Program prepares a work plan in cooperation with State Board. The general approach has been to allocate resources across program tasks for a balanced regulatory effort that meets priorities. The focus of the program is primarily preventative in nature and success can be measured, in part, by the discharger's compliance with monitoring programs established in WDRs. As priorities shift toward more enforcement related activities, staff anticipates that the number of backlogged WDRs would tend to increase, and their ability to revise WDRs when requested by dischargers would tend to decrease. The ability to meet other work plan commitments such as performing all compliance inspections and monitoring report reviews could also be affected. The prolonged nature of some enforcement actions, especially those petitioned to State Board or litigated, could result in fewer outputs for inclusion in work plan performance measures.

#### **4. Site Assessment and Cleanup Program**

##### **Program Overview**

The Regional Board's legal authority for regulation of site cleanup comes from the Division 7 of the California Water Code, State Board plans and policies (specifically Policies 92-49 and 68-16), and the Region's water quality control plans (Basin Plans). Basin Plans complement and implement the California Water Code and State Board policies, and are foundational to the Regional Board's site cleanup regulatory program. These plans are specific to each watershed, designating the beneficial uses of surface and ground water, setting the narrative and numerical water quality objectives to protect those beneficial uses, and establishing implementation plans to achieve the standards established by the plan, specifically the site cleanup implementation plan. The Regional Boards must ensure that dischargers are required to clean up soil and groundwater to levels that achieve background water quality<sup>1</sup> or if background is not reasonable, an alternative level may be set that is the most stringent level that is economically and technologically feasible and at least complies with Title 23 California Code of Regulations (CCR) section 2550.4, protects beneficial uses of water and achieves Basin Plan standards. Section 2550.4 requires consideration of, among other things, public health risks, and damage to wildlife and crops from exposure to waste.<sup>2</sup> A health or ecological risk assessment may be

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<sup>1</sup> With respect to soil, cleanup level of soil must be such that background is not exceeded in groundwater.

<sup>2</sup> Resolution 92-49 section III.G.



necessary to comply with Resolution 92-49 to meet the requirements of Title 23 CCR section 2550.4.

There are two primary program elements in the Site Cleanup Program:

*Spills, Leaks, Investigation, and Cleanups (SLIC) Program*

In the Spills, Leaks, Investigations & Cleanup (SLIC) Program, Regional Board staff oversee the investigation and cleanup of sites with soil and groundwater pollution by numerous pollutants, including petroleum, volatile organic compounds, pesticides, and inorganic constituents, among others. The Program deals with all environments, including surface water, groundwater, soil, sediment, the vadose zone and air, where vapor releases may affect public health. Upon confirming that an unauthorized discharge is polluting or threatens to pollute water quality, the Regional Board initiates, pending available resources, oversight of site investigation and cleanup. Generally dischargers perform cleanup on a voluntary basis. Sites include Brownfields, industrial facilities, pipeline leaks and spills, aboveground tank farms, and pesticide and fertilizer facilities, among others. Much of the pollution is due to past waste disposal and handling practices, as well as spills and leaks. Many of these sites threaten nearby water supply wells, and new sites are discovered as a result of property transactions or nearby environmental investigations.

The Water Code allows the Regional Boards to recover reasonable expenses from responsible parties to oversee investigation and cleanup activities. The responsible parties must sign an acknowledgement form stating the intent to pay oversight bills, and a unique account is set up for staff charges. Invoices are generated quarterly. The program has a 98% recovery rate since its inception, over the last 10 years. In cases where a Cleanup and Abatement Order is issued, that Order provides the basis for reimbursement of oversight cost. The SLIC Program also receives some limited funding for site cleanup oversight from the Cleanup and Abatement Account resulting from staff cost recovery from the ACLs the Regional Board has issued and collected. A relatively small portion of the total funding source is the general fund.

*Federal Facilities Program*

The Federal Facilities Program is similar to the SLIC program in pollutants and environments addressed, but is restricted to federally owned or previously owned Department of Defense (DoD) and Department of Energy (DoE) sites. Decades of defense and energy research activities have degraded water quality on and around federally-owned facilities. Many of these facilities are federal Superfund sites and large, complex investigation and cleanup work involves close cooperation with other State and federal agencies including the Department of Toxic Substances Control and the US EPA. Agreements with the DoD provide for accelerated cleanups at military bases and other Defense sites scheduled for closure and reuse, and also provide cost-recovery funding for State oversight activities. Site investigation and cleanup procedures are consistent with State laws and regulations as well as applicable provisions of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

### Central Valley Region Program Profile

Staff is working on approximately 350 open SLIC facilities under cost recovery within the Region. Staff work on another 30-40 facilities that are not yet in cost recovery using Cleanup and Abatement Account funds or general funds. For the purposes of this discussion, Aerojet, a large complex rocket manufacturing facility that includes approximately 350 individual sites, is included in the SLIC program. In the Federal Facilities Program, staff is working on approximately 20 major DoD facilities and 2 major DoE facilities. Site cleanup staff also works on UST sites at DoD, DoE and SLIC facilities. The federal facilities are typically very large and include numerous cleanup and UST sites that staff is actively working on at each facility. The following table outlines the Region's caseload and program resources:

Program	Number of Facilities	Number of Sites	Number of Active UST cases	Staff Time	Approximate Budget (personal Services only)
SLIC	390	740	~15	14.2 PY	\$1,284,000
DoD	20	~ 600	~ 265	7.7 PY	\$565,000
DoE	2	15	0	0.7 PY	\$51,000

The primary workload for the Region's staff is managing/directing the investigation and cleanup of soil and groundwater at these facilities while addressing vapor releases where necessary. Within the Region funding for each program is approximately allocated as follows, with the allocations for the DoD and DoE sites being based strictly on the geographic locations of the facilities being worked on:

Program	Redding Office	Fresno Office	Sacramento Office
SLIC	18%	26%	56%
DoD	0%	14%	86%
DoE	0%	0%	100%

The number of DoD and DoE facilities and associated sites is not expected to increase in the coming years as these are fairly mature programs. As sites are closed at these facilities, the total number of sites worked on at federal facilities is expected to decrease in the near future. Funding for DoD programs on the State level is based on the anticipated needs of the individual Regions, with each Region receiving funding to cover the anticipated costs of oversight at each specific facility based on each year's estimate of work proposed by the DoD facility. As such, for the most part funding has been and remains generally stable to meet staffing oversight needs in the Federal Facility program. However, in some instances the military bases ask the Region to do more oversight work than the funding level allows, particularly at closed bases that are very intent on transferring property for redevelopment.

The Regional Board SLIC Cost Recovery Program, on the other hand has been chronically under-funded. The net number of new SLIC sites being worked on increases by approximately 10 each year, while funding for the program has remained relatively stable. The Region is expected to receive 2 to 3 additional PYs of support next year as a result of a budget change proposal that was recently approved for oversight of cleanup work at redevelopment and Brownfield sites. There are currently 533 sites on the SLIC backlog list where no staff resources are available

Beginning in 2005, new regulations adopted by the State Board require electronic reporting of monitoring data and technical reports in place of the standard paper reports. For some information (e.g. data tables) this is an efficient method for the transfer and storage of data and is intended to make information more available to the public. However, for the review of text, maps, etc. the system is likely to reduce efficiency while increasing the amount of time staff must spend on computer workstations. In addition hardware and software is not available to fully implement the electronic reviews.

### **Enforcement**

As with the UST program, Regional Board staff in both the SLIC and Federal Facilities Programs work closely with generally cooperative Responsible Parties (RPs) to try and keep site cleanup moving steadily toward completion. Normal work on a site follows the general progression of: site/pollutant investigation, evaluation/selection of remedial alternatives, installation/operation of selected remediation system, post remediation monitoring and then to "no further action" status, often referred to as case closure. This is an iterative process as each phase is determined by the findings of the previous one. However, as the RPs contract for the actual work, they have significant control over the pace at which a site proceeds towards closure. A cooperative RP who wishes to proceed quickly can often complete the site investigation of a relatively simple site in one to two years and have a remediation system installed during the second year. Usually, a soil cleanup remedy to control the source of pollution is installed first followed by a longer-term groundwater cleanup as necessary. An RP who is less motivated or recalcitrant can delay a project for years or even decades. Due to the relatively high workload of sites, staff is unable to propose formal enforcement orders for all recalcitrant RPs. Generally enforcement orders are reserved and issued for cases that have: 1) impacted sensitive receptors (supply wells, surface water, indoor air); 2) significant or potentially significant water quality impacts and 3) RPs who are recalcitrant and which threaten sensitive receptors. Threat to water quality and RP recalcitrance are both taken into consideration when contemplating enforcement actions. In some cases Orders are issued where RPs are not necessarily recalcitrant, but where it is for other reasons useful to specify in an Order all the tasks that must be completed to finally result in site cleanup.

Enforcement at larger Federal Facilities Program sites is somewhat hindered by a number of factors. As stated before, many of these sites are large, complex Superfund sites. In order to facilitate cooperation and the timely cleanup of these sites, the State and US EPA have signed agreements with the DoD, in general agreeing to pursue cooperation and elevating levels of dispute resolution, rather than quick enforcement. Also, due to regulatory constraints, such as

CERLCA and other federal laws and regulations, it is difficult to use permitting actions, or use standard enforcement tools such as 13267 Orders, on these facilities, as many federal facilities are exempt from these requirements.

More problematical is the federal acceptance of State regulatory authority. The DoD, DoE, and US EPA generally refuse to accept the Regional Board's fundamental regulatory authority for soil and water cleanup. Even after 15 years in the program, DoD and DoE are still refusing to accept the Regional Board's authority over soil cleanup when soil contaminants continue to pose a threat to water quality. In addition, soil and groundwater cleanup levels required by State regulations to protect beneficial uses of the water are often more stringent than cleanup levels demanded by the US EPA under federal regulations. Oftentimes the federal agencies, including DoE, DoD and US EPA do not recognize the Regional Board's authority to require these more stringent standards. This makes it difficult and contentious at times to compel the federal agencies to cleanup soil and groundwater to the same degree as private facilities are required to do.

#### **Program Impacts from Redirection of Resources to Enforcement**

Most of the efforts in the Site Cleanup Program up to now are directed at fairly cooperative RPs. Significant time is spent with those sites where investigation and cleanup is progressing to Regional Board staff satisfaction. Additional time is spent on sites where site investigation and cleanup can be initiated with minimal to moderate Regional Board staff involvement. Redirection of staff time away from cooperative and minimally recalcitrant RPs to enforcement of significantly recalcitrant RPs would diminish the time staff has available to devote to ongoing investigations and cleanups. This has the potential to slow down or impede cleanup work already in progress unless additional resources are provided.

Also, as stated above, RP recalcitrance is only one of the factors taken into consideration when taking enforcement actions. Many sites with significantly recalcitrant RPs have minimal threats to water quality. Devoting time to enforcement actions at these sites would also draw time and efforts away from staff oversight of sites with greater impacts or threats to water quality. On the other hand, some cases, such as some dry cleaners, have significant water quality impacts and recalcitrant RPs and/or numerous RPs (former operators and landowners) who are engaged in litigation instead of investigation and cleanup. These sites need much more Regional Board staff time than is available.

### **5. Underground Storage Tank Program**

#### **Program Overview**

Chapter 6.7, Division 20 of the California Health and Safety Code and the California Underground Storage Tank Regulations (Subchapter 16 of Title 23 of the California Code of Regulations), established a program for regulation and cleanup of underground storage tanks and their releases. In 1984 and 1985, 160,000 underground tanks were registered in the State Board's one-time only inventory. There are two primary program elements:

*Leak Prevention*

The Leak Prevention Program element includes requirements for tank installation, construction, testing, leak detection, spill containment, and overfill protection. The State Board established regulations governing prevention of leaks from underground storage tanks (USTs). There are published standards and requirements for installation, tank construction, tank testing, leak detection, spill containment and overfill protection. California UST laws and regulations give local agencies (counties, cities, water districts, etc.) authority throughout the State to issue permits for tank operation and to enforce tank-testing requirements within their jurisdiction.

*Cleanup*

Cleanup of leaking tanks often involves a soil and groundwater investigation and remediation, under the direction of a regulatory agency. Regulatory agencies directing cleanups include Regional Boards, Local Implementing Agencies (LIAs, usually a County or City Health Department) and Local Oversight Programs (LOPs, LIAs under contract with the State Board). In either case, the various agencies should coordinate to ensure that requirements from each agency are met and that the directed investigation and remediation work is consistent.

**Central Valley Region Program Profile**

Within the Region there are approximately 2,650 open UST cases, more than any other Region. Of these approximately 1,100 cases are under the direct supervision of Regional Board staff and approximately 1,550 cases are under the direction of LOP or LIA staff. Board staff works closely with LIA and LOP staffs providing advice, guidance, direction, enforcement support when needed, and an annual training roundtable held at the Regional Board office. In addition, Regional Board staff meet frequently (numerous times per month) with many of the LOP and LIA program staff to discuss program and site specific issues. The following table outlines the Region's caseload and program resources:

Number of Cases	Region 5 Lead	LOP Lead	Region 5 Staff	Budget
2,650	1,100	1,550	19	\$1,357,000

The primary workload for Regional Board staff is managing/directing the investigation and remediation of Regional Board lead cases. The 1,100 cases for which the Region is the lead represent approximately 25.9% of the Regional Board Lead cases Statewide. The Central Valley Region receives approximately 21.5% of the UST funds (sufficient to fund approximately 19 staff positions) distributed to the Regional Board's three offices to work on these cases. Due primarily to the State Board's tendency to distribute resources based on the "every Region should get an equal amount" rather than actual workloads, only two Regions receive lower funding on a per case basis than the Central Valley Region. Within the Region approximately 15.9% of the Regional Board lead cases are handled by the Redding office, 22.5% by the Fresno office and 61.6% are handled by the Sacramento office. According to GeoTracker, State Board's web based UST information and tracking system, in the Region during calendar year 2004, 89 sites were successfully remediated and No Further Action Required (closure) letters issued. However, there were 30 new Regional Board lead cases opened in the system during the same

time period. Similar numbers for closures and new cases are expected for the next couple of years.

The Regional Board UST Program has been chronically under funded. Only after the acknowledgement of the impact of MTBE on groundwater in 1999 were the Regional Boards given sufficient funds to operate programs capable of timely response to submittals and the ability to take enforcement action. Unfortunately recent budget cuts (funding for 6 PYs over the last 4 years) are resulting in the return of the under-funded program of the past. Since June 2001 the Central Valley Region's UST Program has seen a funding reduction of approximately \$75,000. However, because of increasing salaries and other operational cost increases there has been a loss of approximately 4 full time positions in the program since 2001.

As with many Regional Board units the UST Program relies heavily on students to perform many essential tasks, such as filing, data entry and meeting with the public for file reviews, which are necessary for the program to function. In the fall of 2003 the Sacramento student contract was cut from approximately \$45,000 to \$7,500. This cut of nearly 2 student PYs has caused the redirection of a corresponding amount of line staff time to complete these necessary tasks (at thrice the expense of the students).

Beginning in 2005, new regulations adopted by the State Board allow electronic reporting in place of the standard paper reports. For some information (e.g. data tables) this is an efficient method for the transfer and storage of data. However, for the review of text, maps, etc. the system is likely to reduce efficiency while increasing the amount of time staff must spend on computer workstations.

### **Enforcement**

Regional Board staff works closely with Responsible Parties (RPs) to try and keep sites moving steadily toward closure. Normal work progression is: site/contaminant investigation, evaluation/selection of remedial alternatives, installation/operation of selected remediation system, post remediation monitoring and then case closure. However, as the RPs contract for the actual work they have significant control on the pace at which a site proceeds towards closure. A cooperative RP who wishes to proceed quickly can often complete the site investigation in a year and have a remediation system installed during the second year. Contrarily, a RP who is less motivated or recalcitrant can delay a project for years or even decades. Due to a workload of 60-80 cases per line staff, staff is unable to propose formal enforcement orders for all recalcitrant RPs. Generally enforcement orders are reserved and issued for cases that have: 1) impacted sensitive receptors (supply wells or surface water), 2) RPs who are recalcitrant and which threaten sensitive receptors, and, 3) for which the RP is in bankruptcy proceedings. Orders are needed on cases in bankruptcy in order to secure the State's claim to assets for environmental work.

### **Program Impacts from Redirection of Resources to Enforcement**

As with all programs, redirection of staff resources results in fewer accomplishments from where staff is pulled. For the UST Program the reduction would occur in the number of reports

reviewed (work plans, monitoring, etc) and directive letters written to RPs. This would significantly reduce the rate of site investigations and cleanups.

In the UST Program RPs have access to the UST Cleanup Fund (Fund) that will reimburse up to \$1,500,000 per site in investigation and remediation costs. Many RPs became much more proactive knowing that work for which they paid upfront money would be reimbursed, and have conducted work without regulatory pre-approval. All eligible work is supposed to be reimbursed, however, some cases were “second guessed” after the work was done, and reimbursements denied, usually because some work was deemed “unnecessary”. While the number of such instances was very low, the implementation of the program has resulted in RPs not beginning work until they have a “directive” letter from the lead agency approving all work.

One of the UST Program’s priorities has always been to accommodate cooperative RPs who are proactively investigating and remediating their sites. Staff’s current goal is to review and respond to reports within 30-60 days. With the current workload staff is able to meet this goal for the majority of reports. If staff is redirected to increase enforcement, which can be very time intensive, fewer reports will be reviewed and/or the time to review reports will increase. This will result in RPs, who are prepared to do the work but want the assurance that the work is approved and will be reimbursed, waiting until they receive their approval letter.

## **6. Stormwater Program**

### **Program Overview**

The Storm Water Program includes several distinct program elements. These are:

- Municipal (Phase I and Phase II)
- Construction
- Industrial
- CalTrans

In general, the Storm Water program differs from many other programs in that it uses General Permits adopted by the State Board. Those desiring coverage under these permits must submit a Notice of Intent (NOI) to the State Board indicating their intent to be covered under the General Permit and comply with its requirements. Exceptions to this process include Phase I Municipalities and CalTrans.

### *Municipal Separate Storm Sewer System (MS4)*

The MS4 program consists of Phase I for large municipalities, 100,000 population and greater, and Phase II (smaller cities and urban areas). MS4 Phase I requires individual NPDES permits for seven cities/urban areas in the Region. With the adoption of more prescriptive permits over the last few years, staff is spending more time working with the permittees and reviewing Work Plans and Annual Reports. Staff is also working with a contractor (Tetra Tech) to audit MS4 programs. In May 2004, with Regional Board staff, Tetra Tech audited both Sacramento’s MS4 program and the Stockton Area Wide MS4, the Fresno Metropolitan Flood Control District and

Contra Costa County's MS4. Contra Costa County's MS4 permit expires in June 2005 and will be revised to include changes that complement those required by the San Francisco Bay Regional Board, which shares regulatory responsibility for the County.

In response to Federal Phase II Storm Water Regulations, State Board adopted a Statewide General Permit for the Discharge of Storm Water from Small Municipal Separate Storm Sewer Systems (MS4s) in April 2003. The Phase II General Permit requires the designated municipalities to develop and implement six programs to minimize the impact of urbanization on water quality; Public Education, Public Participation, Illicit Discharge Detection and Elimination, Construction Site Storm Water Runoff Control, Post Construction Storm Water Management, and Pollution Prevention/Good Housekeeping for Municipal Operations. Of the nine Regional Boards, the Central Valley Region had the largest number of municipalities designated under the General Permit. Fifty-seven small municipalities within the Central Valley Region submitted applications and Storm Water Management Plans to comply with the requirements. In addition to the municipalities, three non-traditional small MS4s (Cal-Expo, CSU Sacramento, and Elk Grove Unified School District) were designated, requiring them to submit application packages for staff review.

#### *Construction Program*

The Federal Phase II Storm Water Regulations also affected the construction program and reduced the minimum soil disturbance criteria for the Statewide General Construction Storm Water Permit (GCP). Beginning in March 2003, all construction activities with 1 acre of soil disturbance or greater are required to obtain coverage under the GCP. At this time, approximately 4,000 construction projects located within the Central Valley Regional Board's jurisdiction are actively covered under the GCP.

Due to the large number of sites and the high potential for discharges from construction sites to adversely impact water quality, we have focused a significant amount of resources towards the construction program oversight. As a result of outreach and education efforts, an active field presence, and routine enforcement, staff has seen significant improvements in storm water compliance within the development industry. Although staff notes that industry compliance is improving, program oversight and compliance remain a challenge due to the ephemeral nature of construction activity coupled with the unprecedented high growth rate within the Region.

#### *Industrial Program*

There are about 2,500 Industrial Storm Water sites within the Central Valley. All must submit an annual report. A limited number of staff has been allocated to the industrial program. To assist with the workload, a team of inspectors from Tetra Tech visits industrial sites during the wet season. These inspections frequently lead to Notices of Violation and follow-up by Regional Board staff.

Each industrial site filing a NOI to be covered under the General Industrial Permit must submit an annual report to the Regional Board. The Annual Report includes monitoring results for the prior wet season. The annual reports are logged and given a cursory review. Failure to submit



this report and to respond to deficiency letters can lead to a mandatory \$1,000 administrative civil liability.

*Caltrans Phase I Statewide Storm Water Permit*

Staff is also responsible for the oversight and enforcement of the Caltrans Statewide Storm Water Permit within the Region. The Statewide Permit regulates storm water discharges from all Caltrans properties, facilities, and activities. Staff works closely with Caltrans design, construction and maintenance staff, reviewing documents, conducting inspections, and taking enforcement action to ensure compliance with storm water regulations.

**Program Staff Resources**

About 11 staff are assigned to the Storm Water Program. Of this total, about 2 PYs are allocated to Redding, 1.5 to Fresno and 7.5 to Sacramento. Due to a realignment of funds, stormwater funding in FY 2004-05 has been somewhat reduced. The reduction is being covered by leaving vacancies open longer than in previous years.

**Enforcement**

Enforcement is an integral part of the Storm Water Program. Administrative Civil Liability collections over the past several years have been about \$0.5 million per year. While major enforcement cases have consumed significant amounts of staff time, they demonstrate the commitment to this program.

*Non-filer program*

At one time State Board indicated that it would do an extensive non-filer search. This has not materialized and the problem of dealing with the large number of non-filers has been turned over to the Regional Boards. The Central Valley Region's non-filer effort has not started. Additional enforcement resources are needed to find the many non-filers and take enforcement action if they do not obtain permit coverage.

*Implementing a more robust industrial storm water compliance program*

Awareness of the industrial program needs to be raised among those covered by the industrial storm water permits. Also, a more thorough review of annual storm water reports submitted by industrial permittees is needed. While enforcement against General Construction Permit violators has occurred, enforcement actions against industrial permit holders has not passed the Notice of Violation stage.

**7. Water Quality Certification Program**

**Program Overview**

The Central Valley Region has vast wetland resources in its rivers, streams and vernal pools. The function of the Water Quality Certification (WQC) is to protect these wetlands by ensuring that waste discharged to these waters meets state water quality standards. The WQC Program regulates dredge and fill activity that results in any discharge to waters of the United States. These projects require a Federal Permit under Clean Water Act (CWA) section 404. Pursuant to

this section, any applicant for a federal license or permit for any activity that may result in any discharge into waters of the United States shall provide the federal permitting agency (i.e., United States Army Corps of Engineers [Corps]) with a certification from the respective State. The WQC Program started as a relatively narrow response to the requirements of CWA section 401. It has evolved into being the State's *de facto* wetland protection regulation program, without, however, formal recognition of these responsibilities or commensurate funding.

Typical projects for which a WQC is requested include new subdivisions, bridges, roads, pipeline construction; levee reconstruction; wetland habitat improvement; pier installation; boat harbor dredging; gravel mining; flood control excavation; and minor stream crossings. The Central Valley Region has received 390 new applications for water quality certifications over the past year.

Regional Board staff is required to notify an applicant within 30 days as to whether or not an application is considered complete or incomplete. A receipt letter is sent to the applicant that indicates whether or not the application is complete, and provides instructions depending on the status of the application. This may also include a request for additional fees in accordance the new fee schedule. If an application is determined to be complete, staff has 60 days to issue or deny certification. These time requirements keep the limited WQC Program staff very busy.

The fees for WQCs requires submittal of a \$500 application fee plus additional fees based on the amount of dredge or fill impacts to wetlands. For dredge activities the fee is \$0.08 per cubic yard and for fill it is \$2,150 per acre up to a maximum of \$40,000. For linear projects it is an additional \$5.00 per foot. The program has brought in more than \$600,000 in fees the last year but only received \$195,000 for staffing. This funding supported 1.7 PYs, which were split among our three offices. Receipts are expected to further increase in FY 2005-06 with further revision of the fee schedule. There is however a proposal to increase the Central Valley Region's WQC Program staff by 1.4 PYs.

#### **Regulatory Functions including Enforcement**

Currently, inadequate funding for the program does not allow staff to complete basic regulatory functions such as inspections, mitigation monitoring and enforcement. It is both federal policy and the Governor's policy that there be "no net loss" of wetlands. With current resources staff is unable to ensure that these policies are implemented. Redirecting staff to work on enforcement would not have a significant impact on a program currently devoid of a regulatory program. Redirection would allow staff to investigate failure to obtain water quality certifications and illegal discharges to wetlands as reported by the Corps and the California Department of Fish and Game.

Further impacts to the program came in January 2001 when the U.S. Supreme Court issued its decision in *Solid Waste Agency of Northern Cook County v. United States Army Corps of Engineers (SWANCC)*. This decision limited the application of the CWA as it applies to "isolated" waters. The CWA no longer covers discharges of waste to vernal pools, which may be isolated from waters of the United States. In the Tulare Lake Basin, the Corps has also

disclaimed jurisdiction over many ephemeral streams and slough remnants. By narrowing the water and wetland areas under federal regulation, the decision limits the authority of the Corps, and the State and Regional Boards under federal law. The decision does not affect the State and Regional Boards' authorities under state law to regulate discharges to any waters of the state including isolated, non-navigable waters.

Compensatory mitigation is required for most WQCs, which is usually enforced by the Corps. However with the SWANCC decision, isolated wetlands and many other surface waters that do not flow to "navigable" waters will now be regulated by the State. A true weakness in the "isolated wetlands" program is compensatory mitigation. Several Regions currently require mitigation to meet the "no net loss" policy. However, Central Valley staff currently follows the Corps mitigation ratio which requires replacement of lost wetlands at a greater than one to one ratio. However, staff has not generally followed up to ensure that replacement wetlands have actually been created. Additionally, a clear regulatory mechanism is lacking (i.e., there is an Executive Order, but no clear policy statement, or appropriate ratios defined in the Basin Plan). Further, there is no source of funds for staff to charge to when working on non-jurisdictional projects.

In summary, the WQC Program is a minimally funded effort to ensure compliance with the State's water quality laws and to protect wetlands. Conditions of the issued WQCs are placed into the Corps 404 permit. However, the Corps does not necessarily enforce those conditions. A significant amount of money is collected from applicants but not returned to the Central Valley Region for regulatory work. There are no enforcement activities on violations of WQCs currently because staff is unable to provide a field presence. There is not currently a program and funding in place to regulate discharges left unregulated by SWANCC.

## **8. Delta Dredging Program**

### **Program Overview**

Dredging activities in the Sacramento-San Joaquin Delta are regulated in accordance with the California Water Code and the federal Clean Water Act. WDRs are adopted to satisfy the California Water Code and WQCs are issued to satisfy the Clean Water Act. The regulated dredging activities include the actual in-water dredging operation, the discharge of the dredge material to a disposal site and the reuse of the dredge material. The current procedure for all but the very small dredging operations is to include requirements for all phases of the dredging activities in WDRs and to place a condition in the WQC to comply with the WDRs.

### *Water Quality Certification*

In order to dredge in a navigable waterway, the project proponent must obtain a permit from the Corps. The Clean Water Act requires that any federal permit, which may result in discharge into the navigable waters, must be certified by the State, through a WQC, that the discharge will comply with the State's water quality standards. The WQC must certify that projects will comply with water quality objectives and standards in the Basin Plan, including the state's no net

loss policy for the protection of wetlands. WQCs cover the actual in-water work associated with dredging and can cover the discharge of decant water from the disposal sites.

*Waste Discharge Requirements*

WDRs cover all phases of the dredging operations since they all fall under the jurisdiction of the California Water Code. This includes the in-water work, discharge of dredge materials to the disposal site, decant from the disposal site, and reuse of the dredge material. Currently, there are several options for regulating the dredge material disposal sites. There is a general waiver for small projects that generate less than 1,000 cubic yards of non-toxic sediment. For smaller dredging operations, dischargers may apply for coverage under the general waiver or apply for an individual conditional waiver for the disposal and reuse activities. For other dredging operations, WDRs would need to be adopted for the operation. The WDRs would need to be issued pursuant to California Code of Regulations, Title 27 requirements if the dredge materials are classified as designated waste.

**Central Valley Region Program Profile**

One staff is assigned to handle dredging projects in the Delta. Annually, there are approximately six new dredging projects within the Delta, but the workload includes oversight of past dredging projects that either have not been completed or are having lingering impacts from the disposal and/or reuse of the dredge material. Staff is currently dedicating a significant amount of time to setting up a regulatory structure for the reuse of dredge materials. This will be high-profile work that could affect the Department of Water Resources' need to maintain the State's water supply, the Corps' mission to maintain navigability of the Delta waterways, and the economics of the Delta ports.

For typical dredging operations, the primary workload for staff is reviewing CEQA documents, sediment sample and analysis plans, and pre-dredge sediment analysis, and preparing WQCs and WDRs for the projects.

**Enforcement**

Most of the enforcement effort has resulted from data submitted by dischargers. Staff does not have the resources to conduct regular inspections of the dredge locations or collect duplicate samples for analysis. Complete reliance on information provided by dischargers leaves the program open to criticism. Enforcement resources are needed to determine compliance and take enforcement action when needed.

Dredging program enforcement actions have typically been informal (i.e. telling dischargers what they need to do to come into compliance). Due to the lack of staff and the pressure to complete the permitting process, violations were not formally cited. Some of the existing permitting resources must be diverted to enforcement. However, this could lead to delays in the permitting process, which, in turn, could result in hazards to navigation in the Delta waterways. The issuance of enforceable orders will add more clarity to required actions, provide Dischargers with more incentive to comply, and lay out potential consequences for non-compliance. While

formal enforcement actions generally require more resources, they are necessary for an effective enforcement program.

## **9. Irrigated Lands Conditional Waiver Program**

### **Program Overview**

California Water Code section 13260 provides that anyone discharging or proposing to discharge waste that could affect the quality of the waters of the state must file a report of waste discharge with the Regional Board and receive WDRs. This includes waste discharges in irrigation return flows and storm water runoff from agricultural lands. California Water Code section 13269 provides that a Regional Board may waive the requirement for waste discharge requirements for a specific discharge or type of discharge where such a waiver is in the public interest.

Staff is currently implementing two conditional waivers adopted by the Regional Board in Resolution No. R5-2003-0105. One waiver is for groups that form on behalf growers and will conduct the work needed to meet waiver conditions (Coalition Groups). The other waiver is for individual growers. Both waivers require monitoring, implementation of management practices and reporting to the Regional Board. The primary goal of the Program is attainment of water quality objectives supporting the beneficial uses of the waters of the state, as identified in the Basin Plans.

### **Central Valley Region Program Profile**

The following illustrates the scope and complexity of the Irrigated Lands Conditional Waiver Program in addressing water quality impairments from irrigated lands within the Central Valley Region. As of 2002, existing data show that there are:

- Over seven million acres of irrigated lands in the Central Valley region with over \$12 billion gross value of agricultural production;
- Over 160 natural water bodies (totaling over 1,512 miles) dominated by agricultural drainage and/or agricultural supply water, and over 6,291 (totaling over 19,812 miles) constructed agricultural channels;
- Agricultural discharges commonly carry higher levels of sediment, pesticides, nutrients, salt, trace elements and constituents of concern for drinking water providers (total organic carbon and pathogens);
- Over 100 million pounds of pesticide active ingredients are currently used in the Central Valley Region on an annual basis; and
- Over 40 water quality impaired segments of surface waters (translating to over 800 miles of waterways and over 40,000 acres of the Sacramento-San Joaquin Delta) have been documented on the 2002 Clean Water Act Section 303(d) list. These are just the impairments that have been documented as of 2003.

The following table highlights the program scope and resources:

Irrigated Land Acreage in the Region	Program Lead	Compliance and Enforcement Unit Staff	Monitoring Unit and Program Support Unit Staff	Total PYs
> 7 Million	1 PY	5 PY	13.3 PYs	19.3 PYs

A fee schedule for conditional waivers for agriculture is being developed by the State Board and is scheduled for consideration and adoption in May 2005. This fee schedule will be used to support program efforts.

### **Enforcement**

Regional Board management has developed a Compliance and Enforcement Unit within the Irrigated Lands Conditional Waiver Section. The responsibilities of this Unit is to further develop and implement the Program's compliance and enforcement strategies, by at minimum:

- educating local Coalition Groups and individual dischargers of program requirements;
- inspecting and investigating management practice implementation, water quality violations and operational spills; and
- managing regionwide management practice effectiveness data and compliance and enforcement efforts.

Coalition Groups, County Agricultural Commissioners, Resource Conservation Districts, and water districts continue their efforts to increase grower participation with the Condition Waiver Program. Additionally, Regional Board staff continues providing regulatory compliance information to the agricultural community in the form of a newsletter, postcards/brochures, electronic mailings and oral presentations. However, it is becoming increasingly apparent that compliance and enforcement strategies for addressing illegal irrigated lands discharges must be further refined, articulated to the regulated community, and implemented.

### *Information Gathering*

The determination of irrigated lands dischargers not complying with CWC requirements is dependent to a certain extent on the degree of information Coalition Group leaders, county agricultural commissioners, and other agricultural leaders provide to Regional Board staff. Regardless, staff will use all available information to identify dischargers from irrigated lands that are not in compliance with one of the three options to their regulatory obligations.

### *Enforcement Priorities*

The Regional Board will address enforcement issues regarding owners and/or operators of irrigated lands that are discharging waste but are not operating under the conditional waivers or WDRs. Formal enforcement tools include 13267 Orders for technical reports and investigations, Cleanup and Abatement Orders, Time Schedule Orders, Cease and Desist Orders, and

Administrative Civil Liability. The current enforcement priority of dischargers not complying with waiver requirements is:

- larger dischargers that (1) contribute, or have the potential to contribute, a significant amount of waste to surface water bodies and that (2) are aware of their responsibility under the California Water Code for obtaining regulatory coverage, but make an informed decision not to participate;
- dischargers that are aware of options for obtaining regulatory coverage, but do not do so because they sincerely, but mistakenly, believe they are not dischargers; and
- dischargers that are still unaware of their responsibilities and the options available to them to obtain regulatory coverage for their waste discharges.

Enforcement within the Irrigated Lands Conditional Waiver Program must also address regional issues and areas in which monitoring data show exceedence of water quality objectives. Approaches for working with illegal discharges will need to be different for areas covered by a Coalition Group versus areas where viable Coalition Groups efforts have not developed. Staff needs to continue compiling and evaluating data on the environmental setting in the Region relative to irrigated lands. This information will include, but is not limited to: (1) pesticide-use and farming patterns, and crop-specific acreage by county, and (2) documented water quality impairments.

Factors to have considerable weight for setting compliance and enforcement priorities include, but are not limited to:

- Clean Water Act Section 303(d) listings;
- TMDL and other Regional Board program(s) and watershed-based priorities;
- the Bay Protection and Toxic Hot Spots Cleanup Program;
- temporal and spatial extent, and severity, of beneficial use impairments; and
- areas not covered by an active Coalition Group.

## **10. Confined Animal Program**

### **Program Overview**

Both state and federal laws and regulations apply to confined animal facilities. Title 27 of the California Code of Regulations establishes minimum regulations for waste management at confined animal facilities. The Tulare Lake Basin Plan has additional restrictions that apply to waste pond site locations and flood protection. Federal regulations implementing the Clean Water Act define certain confined animal facilities (CAFOs) as point sources that are subject to NPDES permitting requirements. Recent changes to the federal regulations require these facilities to now apply for coverage under an NPDES Permit.

Historically, most confined animal facilities in the Central Valley were operating under a conditional waiver of WDRs. In 2003, the Regional Board rescinded the waiver and directed staff to prepare regulatory orders for all facilities, with the first priority being the development of

a general NPDES permit for existing dairies, the largest group of confined animal facilities in the Central Valley. This effort will be followed by development of a general WDR for all remaining confined animal facilities, and individual permits will have to be written for new operations.

The new permits that are under development will have to address both surface and ground water. Waste storage and handling poses the greatest threat to surface waters as a result of overflows while land application of animal waste poses the greatest threat to ground water quality. The NPDES Permit under development will call for monitoring to verify that discharges do not adversely impact beneficial uses. Implementation of the monitoring programs and responding to situations where ground water is adversely impacted is expected to be a major program component in the future. In addition, record keeping and reporting requirements under the new permits will require the development and implementation of nutrient management plans for all fields that receive animal waste applications at these facilities. Adjusting to the burden of these permits will be a challenge for both the industry and the Regional Board.

#### **Central Valley Region Program Profile**

There are approximately 2,050 confined animal facilities in the Central Valley with the greatest number being dairies. Of the 1,600 dairies in the region, approximately 1,000 are of sufficient size to meet the federal criteria for needing an NPDES Permit. Dairies have been the focus of the Confined Animal Facility program for the past several years. In addition, there are approximately 450 poultry operations as well as cattle feedlots and hog operations that must be assessed. Most of these facilities are in the San Joaquin Valley and are handled by the Sacramento and Fresno Offices.

Staff efforts in the Confined Animal Facility Program have been focused primarily on maintaining a field presence. The result has been a significant drop in surface water discharges. The primary activity of the Sacramento staff is complaint investigations and enforcement related to surface water discharges, but this office is also taking the lead in drafting the new permit. Fresno staff focus on compliance inspections and review and permitting of proposed new dairies. One complication of these new facilities is that the Regional Board may be the lead agency with regard to CEQA thus requiring considerable staff time.

With the adoption of the new NPDES permit and subsequent Regional Board orders, the administrative workload will increase dramatically and this is expected to adversely impact the ability of the program to sustain the field presence that has resulted in reduced discharges.

Number of Cases	Region 5 Staff
2050	7.0

#### **Enforcement**

Most complaint investigations and many of the site inspections result in preparation of NOV's calling for action by specific dates. In 2004 Regional Board staff prepared 74 Notices of



Violation, five 13267-request letters, two ACL Orders for major discharges as well as nine ACL Complaints for failure to submit annual reports.

In addition, most of the enforcement activity of this program is conducted through the Dairy Task Force. This is a group of local, state and federal prosecuting attorneys that meets with the Regional Board and Department of Fish and Game to coordinate environmental enforcement related to surface water discharges. Prosecution by this group has resulted in court injunctions, hundreds of thousands of dollars in fines and, in a few cases, jail time. In 2004, staff prepared documentation on 11 instances of discharges that were submitted to the Dairy Task Force. The result of this effort has been a significant reduction in the number and severity of surface water discharges. The success of this effort is almost entirely associated with a strong field presence and the industry response by developing an environmental stewardship program. As stated above, with the adoption of the new NPDES permit and subsequent Regional Board orders the administrative workload will increase dramatically and this is expected to adversely impact the ability of the program to sustain the field presence that has resulted in reduced discharges.

#### **Program Impacts from Redirection of Resources to Enforcement**

At the present time, about half of the program resources are dedicated to enforcement-related activities. Increasing enforcement activities will reduce time dedicated to review of new facilities (problem prevention) and the development and implementation of the new NPDES permit that is required by federal regulations. A reduction in effort or a delay in the implementation of the new federal regulation will likely draw a significant complaint from US EPA although they have not provided any resources to implement the program.

### **11. Total Maximum Daily Load Program**

#### **Program Overview**

Under Section 303(d) of the Clean Water Act, the State establishes lists of impaired water bodies and priority rankings and schedules for addressing the impairments. Impairments are usually addressed by establishing or adopting Total Maximum Daily Loads (TMDLs). TMDLs have several required elements including, establishment of targets, determination of loading capacity, identification of sources and assignment of allocations among the identified sources. TMDLs are typically implemented through Basin Plan amendments, by establishing requirements in NPDES permits or as conditions in waivers. The Basin Plan amendments, permits and conditional waivers include provisions and requirements that must be implemented by responsible parties. For example, existing TMDLs require responsible parties to monitor, implement practices, reduce loads, conduct studies and take other actions needed to achieve TMDL targets. Implementation of the requirements assigned to responsible parties needs to be tracked.

#### **Central Valley Region Profile**

The Central Valley Region currently has over 100 water bodies listed as impaired (over 250 water body-pollutant combinations), including virtually all of our mainstream rivers and the Delta. TMDLs have been completed for selenium in Salt Slough, the Grasslands Marshes, and the San Joaquin River; salinity and boron in the San Joaquin River; dissolved oxygen in the Deep

Water Ship Channel, copper, zinc and cadmium in the upper Sacramento River; mercury in Clear Lake, diazinon in the Sacramento and Feather River and diazinon and chlorpyrifos in six Sacramento area urban creeks. In the next few years, staff anticipates bringing to the Regional Board for their consideration TMDLs for mercury in Cache Creek, diazinon and chlorpyrifos in the Delta and San Joaquin River, and nutrients in Clear Lake. All these TMDLs will include implementation programs that require responsible parties to monitor, implement practices, clean up sites, conduct studies.

### **Enforcement**

In general, the requirements for responsible parties are integrated into other Regional Board programs (NPDES , Stormwater, Irrigated Lands Waiver, Dairies, etc.). TMDL staff coordinates with the other programs to assure that the requirements are included in applicable permits and waivers and to make sure that compliance with requirements is achieved. In some cases, the requirements are not linked directly to any existing program. For example, the dissolved oxygen TMDL requires actions and studies to address flow and channel morphology. There are no existing Regional Board programs that can accept oversight of this effort. In this case, and other similar cases, tracking of implementation requirements will be the responsibility of TMDL staff.

### **Program Impacts from Redirection of Resources to Enforcement**

The number of responsible party actions that need to be tracked will increase as more and more TMDLs are adopted. Some of the actions that are required from responsible parties are quite comprehensive and complex (i.e., studies, research, reports, practice effectiveness evaluations, etc.) and will require a substantial investment of Regional Board staff time to review and evaluate. Even more resources will be needed if enforcement actions are needed to assure that responsible party actions are implemented. To the greatest degree possible, staff will build the tracking and enforcement of these responsible party actions into programs with existing regulatory frameworks. However, this is clearly a new resource investment that will impact other efforts (mainly initiating work on new TMDLs) if additional resources are not obtained. As more time is implementing adopted TMDLs, less time will be available to develop new TMDLs.